

FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009

HB 316/a

March 13, 2009

Madam President:

Your **CORPORATIONS AND TRANSPORTATION COMMITTEE**, to whom has been referred

**HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 316**

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 11, after the first semicolon, strike the remainder of the line, strike line 12 in its entirety and insert in lieu thereof "ENACTING THE NEW MEXICO MORTGAGE LOAN ORIGINATOR LICENSING ACT; CREATING LICENSING REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS; PROVIDING PENALTIES; AMENDING THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT; AMENDING THE HOME LOAN PROTECTION ACT; PROSCRIBING CERTAIN PRACTICES; CREATING A FUND; MAKING AN APPROPRIATION."

2. On page 1, between lines 14 and 15, insert the following new sections:

"Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 24 of this act may be cited as the "New Mexico Mortgage Loan Originator Licensing Act".

Section 2. [NEW MATERIAL] FINDINGS--PURPOSE.--

A. The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon New Mexico's consumers, New Mexico's economy, the neighborhoods and communities of New Mexico and the housing and real estate industry. The legislature finds that accessibility to mortgage credit is vital to New Mexico's residents. The legislature also finds that it is essential for the protection of the residents of New Mexico and the

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stability of New Mexico's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process.

B. The purpose of the New Mexico Mortgage Loan Originator Licensing Act is to protect consumers seeking mortgage loans.

Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the New Mexico Mortgage Loan Originator Licensing Act:

A. "clerical or support duties" may include, subsequent to the receipt of an application:

(1) the receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(2) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

B. "depository institution" has the same meaning as the definition of depository institution in Section 3 of the Federal Deposit Insurance Act and includes any credit union;

C. "director" means the director of the financial institutions division of the regulation and licensing department;

D. "dwelling" means a residential structure that contains one to four units whether or not that structure is attached to real property. "Dwelling" includes an individual condominium unit, an individual cooperative unit, a mobile home and a trailer if used as

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a residence;

E. "federal banking agencies" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration and the federal deposit insurance corporation;

F. "immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and "immediate family member" includes a stepparent, a stepchild, a stepsibling and an adoptive relationship;

G. "individual" means a natural person;

H. "license" means a license issued pursuant to Section 6 of the New Mexico Mortgage Loan Originator Licensing Act;

I. "loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, pursuant to the Mortgage Loan Company Act;

J. "mortgage loan company" means any person defined as such in the Mortgage Loan Company Act;

K. "mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

(1) an individual engaged solely as a loan processor or underwriter except as otherwise provided in Subsection I of this section;

(2) a person that only performs real estate brokerage

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activities and is licensed or registered in accordance with New Mexico law, unless the person is compensated by a lender, a mortgage loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator; and

(3) a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code;

L. "nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators;

M. "nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage;

N. "person" means a natural person, corporation, company, limited liability company, partnership or association;

O. "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(1) acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(2) bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction;

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(4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker pursuant to any applicable law; and

(5) offering to engage in any activity or to act in any capacity described in Paragraphs (1) through (4) of this subsection;

P. "registered mortgage loan originator" means any individual who:

(1) meets the definition of mortgage loan originator and is an employee of:

(a) a depository institution;

(b) a subsidiary that is: 1) owned and controlled by a depository institution; and 2) regulated by a federal banking agency; or

(c) an institution regulated by the farm credit administration; and

(2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry;

Q. "residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or on residential real estate upon which is constructed or is intended to be constructed a dwelling as so defined;

R. "residential real estate" means any real property located in New Mexico upon which is constructed or intended to be constructed a dwelling;

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S. "servicer" means a person that collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing residential mortgage loan; and

T. "unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Section 4. [NEW MATERIAL] LICENSE AND REGISTRATION REQUIRED TO ORIGINATE MORTGAGE LOANS.--

A. Unless specifically exempted from the New Mexico Mortgage Loan Originator Licensing Act pursuant to Subsection B of this section, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in New Mexico without first obtaining and maintaining annually a license pursuant to that act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. All new licenses and license renewals shall expire on December 31 of each year. All license renewal applications shall be submitted on or before November 1 of each year.

B. The following are exempt from the provisions of the New Mexico Mortgage Loan Originator Licensing Act:

(1) registered mortgage loan originators when acting for an entity defined in Subparagraphs (a) through (c) of Paragraph (1) of Subsection P of Section 3 of the New Mexico Mortgage Loan Originator Licensing Act;

(2) an individual who offers or negotiates terms of a

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residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) an individual who offers or negotiates terms of a real property sale financed in whole or in part by the seller and secured by the seller's real property; or

(4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator.

C. A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license pursuant to Subsection A of this section. Each contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

D. A mortgage loan originator who is currently licensed in another state through the nationwide mortgage licensing system and registry may be granted a temporary mortgage loan originator license valid for ninety days while the mortgage loan originator completes the education and testing requirements of the New Mexico Mortgage Loan Originator Licensing Act. The mortgage loan originator's current license in another state must be valid for more than ninety days beyond the date of application for a temporary license in order to receive a temporary license in New Mexico.

Section 5. [NEW MATERIAL] STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.--

A. Applicants for a license shall apply in a form as

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prescribed by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of the New Mexico Mortgage Loan Originator Licensing Act.

B. In order to fulfill the purposes of the New Mexico Mortgage Loan Originator Licensing Act, the director may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensed mortgage loan originators or other individuals subject to that act.

C. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including:

(1) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain:

(a) an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the federal Fair Credit Reporting Act; and

(b) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

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D. For the purposes of this section and in order to reduce the points of contact that the federal bureau of investigation may have to maintain for purposes of Paragraph (1) of Subsection C of this section and Subparagraph (b) of Paragraph (2) of Subsection C of this section, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the federal department of justice or any governmental agency with mortgage industry oversight authority.

E. For the purposes of this section and in order to reduce the points of contact that the director may have to maintain for purposes of Subparagraphs (a) and (b) of Paragraph (2) of Subsection C of this section, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source as directed by the director.

Section 6. [NEW MATERIAL] ISSUANCE OF LICENSE.--The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

A. the applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a formal vacation of such revocation shall not be deemed a revocation;

B. the applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court, not including a juvenile court:

(1) during the seven-year period preceding the date of the application for licensing and registration; or

(2) at any time preceding the date of application, if the felony involved an act of fraud or dishonesty, a breach of trust or money laundering; and

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(3) provided that any pardon of a conviction shall not be a conviction for the purposes of this subsection;

C. the applicant has demonstrated financial responsibility, good character and general fitness so as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of the New Mexico Mortgage Loan Originator Licensing Act. For the purposes of this subsection, an individual has shown that the individual is not financially responsible when the individual has shown a disregard in the management of the individual's own financial condition. A determination that an individual has not shown financial responsibility may include but is not limited to:

(1) current outstanding judgments, except judgments solely as a result of medical expenses;

(2) current outstanding tax liens or other government liens and filings;

(3) foreclosures within the past three years; or

(4) a pattern of seriously delinquent accounts within the past three years;

D. the applicant has completed the pre-licensing education requirement set forth in Section 7 of the New Mexico Mortgage Loan Originator Licensing Act;

E. the applicant has passed a written test that meets the test requirement set forth in Section 8 of the New Mexico Mortgage Loan Originator Licensing Act; and

F. the applicant has met the surety bond requirements set forth in Section 17 of the New Mexico Mortgage Loan Originator Licensing Act.

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Section 7. [NEW MATERIAL] PRE-LICENSING EDUCATION OF MORTGAGE LOAN ORIGINATORS.--

A. In order to meet the pre-licensing education requirement referred to in Subsection D of Section 6 of the New Mexico Mortgage Loan Originator Licensing Act, an individual shall complete at least twenty hours of education approved in accordance with Subsection B of this section, which shall include at least:

- (1) three hours of federal law and regulations;
- (2) three hours of ethics, including instruction on fraud, consumer protection and fair lending issues;
- (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- (4) three hours of New Mexico law and administrative rules.

B. For the purposes of Subsection A of this section, pre-licensing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

C. Nothing in this section shall preclude any pre-licensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the applicant or by an entity that is affiliated with the applicant by an agency contract, or by any subsidiary or affiliate of the employer or entity.

D. Pre-licensing education may be offered in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

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E. The pre-licensing education requirements approved by the nationwide mortgage licensing system and registry in Paragraphs (1) through (4) of Subsection A of this section for any state shall be accepted as credit toward completion of pre-licensing education requirements in New Mexico.

F. An individual previously licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act subsequent to the effective date of that act applying to be licensed again shall prove that the individual has completed all of the continuing education requirements for the year in which the license was last held.

Section 8. [NEW MATERIAL] TESTING OF MORTGAGE LOAN ORIGINATORS.--

A. In order to meet the written test requirement referred to in Subsection E of Section 6 of the New Mexico Mortgage Loan Originator Licensing Act, an individual shall pass, in accordance with the standards established pursuant to this section, a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

B. A written test shall not be treated as a qualified written test for purposes of Subsection A of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

- (1) ethics;
- (2) federal law and regulations pertaining to mortgage origination;
- (3) New Mexico law and rules pertaining to mortgage origination; and

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(4) federal and New Mexico law and regulations and rules, including those concerning fraud, consumer protection, the nontraditional mortgage product marketplace and fair lending issues.

C. Nothing in this section shall prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or at the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

D. An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

E. An individual may retake a test two consecutive times, provided that each retake occurs at least thirty days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

F. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

Section 9. [NEW MATERIAL] STANDARDS FOR LICENSE RENEWAL.--

A. The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) the mortgage loan originator continues to meet the minimum standards for license issuance pursuant to Section 6 of the New Mexico Mortgage Loan Originator Licensing Act;

(2) the mortgage loan originator has satisfied the

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annual continuing education requirements set forth in Section 10 of the New Mexico Mortgage Loan Originator Licensing Act; and

(3) the mortgage loan originator has paid all required fees for renewal of the license.

B. The license of a mortgage loan originator who fails to satisfy the minimum standards for license renewal shall expire. The director may adopt rules for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

Section 10. [NEW MATERIAL] CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS.--

A. In order to meet the annual continuing education requirements set forth in Paragraph (2) of Subsection A of Section 9 of the New Mexico Mortgage Loan Originator Licensing Act, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with Subsection B of this section, which shall include at least:

(1) three hours of federal law and regulations;

(2) two hours of ethics, including instruction on fraud, consumer protection and fair lending issues;

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) one hour of New Mexico law and administrative rules.

B. For the purposes of Subsection A of this section, continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education

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course shall include review and approval of the course provider.

C. Nothing in this section shall preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or by an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

D. Continuing education may be offered in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

E. A licensed mortgage loan originator:

(1) except for the provisions of Subsection B of Section 9 of the New Mexico Mortgage Loan Originator Licensing Act and Subsection I of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

F. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours' credit for every one hour taught.

G. An individual who has successfully completed the education requirements approved by the nationwide mortgage licensing system and registry and as set forth in Subsection A of this section for any state shall be accepted as credit toward completion of continuing education requirements in New Mexico.

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H. A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

I. An individual who meets the requirements set forth in Paragraphs (1) and (3) of Subsection A of Section 9 of the New Mexico Mortgage Loan Originator Licensing Act may make up any deficiency in continuing education as established by rule promulgated by the director.

Section 11. [NEW MATERIAL] AUTHORITY TO REQUIRE LICENSE AND TO SET FEES.--

A. In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. In order to carry out this requirement, the director may participate in the nationwide mortgage licensing system and registry. For this purpose, the director may establish requirements as necessary, including but not limited to:

- (1) background checks for:
 - (a) criminal history through fingerprint or other databases;
 - (b) civil or administrative records;
 - (c) credit history; or
 - (d) any other information deemed necessary by the nationwide mortgage licensing system and registry;
- (2) payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry;

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(3) setting or resetting as necessary renewal or reporting dates; and

(4) requirements for amending or surrendering a license or any other activities the director deems necessary for participation in the nationwide mortgage licensing system and registry.

B. The director shall establish by rule fees sufficient to cover the costs of administering the New Mexico Mortgage Loan Originator Licensing Act. These fees may include:

(1) an original and renewal license fee paid by each licensed mortgage loan originator;

(2) an application fee to cover the costs of processing applications;

(3) an examination or investigation fee to cover the costs of any examination or investigation of the books and records of a licensed mortgage loan originator or other person subject to the New Mexico Mortgage Loan Originator Licensing Act; and

(4) late fees, license amendment fees and any other fees associated with the costs of administering the New Mexico Mortgage Loan Originator Licensing Act.

C. Mortgage loan originators shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of the New Mexico Mortgage Loan Originator Licensing Act occurred or when the mortgage loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All money, fees and penalties collected pursuant to the New Mexico Mortgage Loan Originator Licensing Act shall be deposited into the mortgage regulatory fund.

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D. For the purposes of implementing an orderly and efficient licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For individuals previously registered or licensed pursuant to the Mortgage Loan Company and Loan Broker Act, the director may establish expedited review and licensing procedures.

Section 12. [NEW MATERIAL] NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS.--The director shall establish rules whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director.

Section 13. [NEW MATERIAL] ENFORCEMENT--VIOLATIONS--PENALTIES.--

A. In order to ensure the effective supervision and enforcement of the New Mexico Mortgage Loan Originator Licensing Act, the director may:

(1) deny, suspend, revoke or decline to renew a license for a violation of the New Mexico Mortgage Loan Originator Licensing Act or rules issued pursuant to that act or an order or a directive entered pursuant to that act;

(2) deny, suspend, revoke or decline to renew a license if an applicant or licensed mortgage loan originator:

(a) fails at any time to meet the requirements of Section 6 or 9 of the New Mexico Mortgage Loan Originator Licensing Act; or

(b) withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) order restitution against mortgage loan

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originators for violations of that act;

(4) impose fines on mortgage loan originators pursuant to Subsections C through E of this section;

(5) order or direct such other affirmative action as the director deems necessary;

(6) bar or suspend a mortgage loan originator from licensure in New Mexico as a mortgage loan originator; and

(7) issue orders or directives pursuant to the New Mexico Mortgage Loan Originator Licensing Act as follows:

(a) order or direct mortgage loan originators to cease and desist from conducting business, including issuing an immediate temporary order to cease and desist;

(b) order or direct mortgage loan originators to cease any harmful activities or violations of that act, including issuing an immediate temporary order to cease and desist; and

(c) enter immediate temporary orders to cease business pursuant to a license issued pursuant to the authority granted pursuant to Section 4 of the New Mexico Mortgage Loan Originator Licensing Act if the director determines that the license was erroneously granted or the licensed mortgage loan originator is currently in violation of that act.

B. The director may initiate one or more of the actions set forth in Section 15 of the New Mexico Mortgage Loan Originator Licensing Act.

C. It is a violation of the New Mexico Mortgage Loan Originator Licensing Act for a mortgage loan originator to:

(1) directly or indirectly employ any scheme, device

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or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) engage in any unfair or deceptive practice toward any person;

(3) obtain property by fraud or misrepresentation;

(4) solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;

(6) conduct any business covered by the New Mexico Mortgage Loan Originator Licensing Act without holding a valid license as required pursuant to that act, or assist or aid and abet any person in the conduct of business pursuant to that act without a valid license as required pursuant to that act;

(7) fail to make disclosures as required by the New Mexico Mortgage Loan Originator Licensing Act and any other applicable state or federal law, including rules and regulations thereunder;

(8) fail to comply with the provisions of the New Mexico Mortgage Loan Originator Licensing Act or rules or regulations promulgated pursuant to that act, or fail to comply with any other state or federal law, including rules and regulations thereunder, applicable to any business authorized or conducted pursuant to the New Mexico Mortgage Loan Originator Licensing Act;

(9) make, in any manner, a false or deceptive

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statement or representation, including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, engaging in bait-and-switch advertising;

(10) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the director or another governmental agency;

(11) make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property. Nothing in this paragraph shall be construed to prohibit a mortgage loan originator from asking the appraiser to consider additional appropriate property information or provide further detail, substantiation or explanation for the appraiser's value conclusion;

(12) collect, charge, attempt to collect or charge, or to use or propose any agreement purporting to collect or charge, any fee prohibited by the New Mexico Mortgage Loan Originator Licensing Act;

(13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the director and the property insurer;

(14) fail to account truthfully for money belonging to a party to a residential mortgage loan transaction;

(15) engage in mortgage loan origination on behalf of

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more than one mortgage loan company;

(16) pay, receive or collect in whole or in part any commission, fee or other compensation for originating a mortgage loan in violation of the New Mexico Mortgage Loan Originator Licensing Act, including a mortgage loan originated by any unlicensed person other than an exempt person;

(17) charge or collect any fee, commission or rate of interest or make or originate any mortgage loan with terms or conditions or in a manner contrary to other applicable federal and state laws;

(18) advertise mortgage loans, including rates, margins, discounts, points, fees, commission or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants;

(19) coerce, extort, induce, bribe or intimidate or attempt to coerce, extort, induce, bribe or intimidate an appraiser to value property in excess of its fair market value;

(20) originate a mortgage loan that contains a pre-payment penalty;

(21) misrepresent a borrower's credit rating;

(22) misrepresent, inflate or fabricate, or encourage a borrower to misrepresent, inflate or fabricate, the source or amount of a borrower's actual income or assets, other than allowable grossed-up income not to exceed twenty-five percent per current agency guidelines as set by the director, in the application or underwriting process for a residential mortgage loan;

(23) originate a residential mortgage loan when the terms of that loan are in violation of the Home Loan Protection Act;

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(24) originate a residential mortgage loan that does not require documentation and consideration of the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The provisions of this paragraph shall not apply to a residential mortgage loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a mortgage loan servicer or lender with which the borrower has a current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit; or

(25) originate a residential mortgage loan that does not require a determination of the borrower's reasonable ability to pay the costs set forth in this paragraph. In the case of an adjustable rate residential mortgage loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the mortgage loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments.

D. The director may impose a civil penalty on a mortgage loan originator if the director finds, on the record after notice and opportunity for hearing, that the mortgage loan originator has violated or failed to comply with any requirement of the Mortgage Loan Originator Licensing Act or any rule promulgated by the director pursuant to that act or any order issued pursuant to authority of that act.

E. The maximum amount of penalty for each act or omission

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described in Subsection C of this section shall be twenty-five thousand dollars (\$25,000).

F. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

Section 14. [NEW MATERIAL] NOTICE OF CONTEMPLATED ACTION--
HEARINGS.--

A. When the director contemplates taking any action specified in Paragraphs (1) through (6) of Subsection A or in Subsection D of Section 13 of the New Mexico Mortgage Loan Originator Licensing Act, the director shall serve upon the licensed mortgage loan originator a written notice containing a statement:

(1) that the director has sufficient evidence that, if not rebutted or explained, will justify the director in taking the contemplated action;

(2) indicating the general nature of the evidence;
and

(3) that unless the licensed mortgage loan originator within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the director containing a request for a hearing, the director will take the contemplated action.

B. If the licensed mortgage loan originator does not mail a request for a hearing within the time and in the manner required by this section, the director may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

C. If the licensed mortgage loan originator mails a request for a hearing as required by this section, the director

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shall, within thirty days of receipt of the request, notify the licensed mortgage loan originator of the time and place of the hearing, the name of the person who shall conduct the hearing for the director and the statutes and regulations authorizing the director to take the contemplated action.

Section 15. [NEW MATERIAL] POWER OF THE COURT TO GRANT RELIEF.--

A. Upon a showing by the director that a person has or is about to violate the New Mexico Mortgage Loan Originator Licensing Act or any rule or order of the director pursuant to that act, the district court of the first judicial district or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) a civil penalty up to a maximum of twenty-five thousand dollars (\$25,000) for each violation;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

(6) the appointment of a receiver or conservator for the defendant or the defendant's assets;

(7) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action under that act; or

(8) other relief as the court deems just.

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B. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director pursuant to Section 13 of the New Mexico Mortgage Loan Originator Licensing Act in connection with the transactions constituting violations of that act.

C. The court shall not require the director to post bond in an action pursuant to this section.

Section 16. [NEW MATERIAL] UNLICENSED ACTIVITY.--

A. An individual who acts as a mortgage loan originator without being properly licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act is guilty of a misdemeanor for the first offense and upon conviction shall be sentenced in accordance with the provisions of Subsection A of Section 31-19-1 NMSA 1978.

B. In the case of a conviction pursuant to Subsection A of this section, the court may impose a deferred sentence in accordance with Section 31-20-6 NMSA 1978.

C. An individual who violates Subsection A of this section a second or subsequent time is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with Section 31-18-15 NMSA 1978.

Section 17. [NEW MATERIAL] SURETY BOND REQUIRED.--

A. Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event the mortgage loan originator is an employee or exclusive agent of a mortgage loan company subject to the Mortgage Loan Company Act, the surety bond of the mortgage loan company subject to that act may be used in lieu of the mortgage loan originator's surety bond requirement.

B. The surety bond shall provide coverage for each

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mortgage loan originator in an amount as prescribed in Subsection E of this section.

C. The surety bond shall be in a form as prescribed by the director.

D. The director may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of the New Mexico Mortgage Loan Originator Licensing Act.

E. The penal sum of the surety bond shall be in an initial amount of fifty thousand dollars (\$50,000). Upon renewal of the license, the penal sum of the surety bond shall be in an amount that reflects the total dollar amount of mortgage loans originated annually in New Mexico by the licensed mortgage loan originator, as follows:

(1) zero dollars (\$0.00) to three million dollars (\$3,000,000), a surety bond of fifty thousand dollars (\$50,000);

(2) more than three million dollars (\$3,000,000) and less than ten million dollars (\$10,000,000), a surety bond of one hundred thousand dollars (\$100,000); and

(3) ten million dollars (\$10,000,000) or more, a surety bond of one hundred fifty thousand dollars (\$150,000).

F. Every bond shall provide for suit thereon by any person who has a cause of action pursuant to the New Mexico Mortgage Loan Originator Licensing Act. In no event shall the total liability of the surety to all persons, cumulative or otherwise, exceed the amount specified in the bond. Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three years after the act upon which the suit is based.

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G. When an action is commenced on a licensed mortgage loan originator's bond, the director may require the filing of a new bond.

H. Immediately upon recovery on any action on a bond, the licensed mortgage loan originator shall file a new bond.

Section 18. [NEW MATERIAL] CONFIDENTIALITY.--In order to promote more effective regulation and reduce regulatory burden through supervisory information-sharing, the following provisions shall apply:

A. except as otherwise provided in Public Law 110-289, Section 1512, the requirements pursuant to any federal law or pursuant to the Inspection of Public Records Act regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising pursuant to federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the Inspection of Public Records Act;

B. for the purposes set forth in Subsection A of this section, the director may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the director;

C. information or material that is subject to a privilege or confidentiality pursuant to Subsection A of this section shall

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not be subject to:

(1) disclosure pursuant to any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless, with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege;

D. provisions of the Inspection of Public Records Act relating to the disclosure of confidential supervisory information or of any information or material set forth in Subsection A of this section that are inconsistent with that subsection shall be superseded by the requirements of this section; and

E. this section shall not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

Section 19. [NEW MATERIAL] INVESTIGATION AND EXAMINATION AUTHORITY.--In addition to any authority allowed pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the director may conduct investigations and examinations as follows:

A. for the purposes of initial licensing, license renewal, license suspension, license revocation or termination or general or specific inquiry or investigation to determine compliance with the New Mexico Mortgage Loan Originator Licensing Act, the director shall have access to and may receive and use any books, accounts,

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records, files, documents, information or evidence, including:

(1) criminal, civil and administrative history information, including nonconviction data as specified in the Arrest Record Information Act;

(2) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the federal Fair Credit Reporting Act; and

(3) any other documents, information or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence;

B. for the purposes of investigating violations or complaints arising pursuant to the New Mexico Mortgage Loan Originator Licensing Act, or for the purposes of examination, the director may review, investigate or examine any individual subject to that act as often as necessary in order to carry out the purposes of that act. The director may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation and may direct, subpoena or order such persons to produce books, accounts, records, files and any other documents the director deems relevant to the inquiry;

C. each mortgage loan originator shall make available to the director upon request the books and records relating to the operations of the mortgage loan originator. The director shall have access to the books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors and agents of the mortgage loan originator concerning their business;

D. each mortgage loan originator shall make or compile

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reports or prepare other information as directed by the director in order to carry out the purposes of this section, including:

- (1) accounting compilations;
- (2) information lists and data concerning loan transactions in a format prescribed by the director; and
- (3) such other information deemed by the director to be necessary to carry out the purposes of this section;

E. in making any examination or investigation authorized by the New Mexico Mortgage Loan Originator Licensing Act, the director may control access to any documents and records of the individual under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensed mortgage loan originator have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of the New Mexico Mortgage Loan Originator Licensing Act, the licensed mortgage loan originator or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs;

F. in order to carry out the purposes of this section, the director may:

- (1) retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;
- (2) enter into agreements or relationships with other

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government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures and documents, records, information or evidence obtained pursuant to this section;

(3) use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the mortgage loan originator;

(4) accept and rely on examination or investigation reports made by other government officials, within or without this state; and

(5) accept audit reports made by an independent certified public accountant for the mortgage loan originator in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the director;

G. the authority of this section shall remain in effect whether such a licensed mortgage loan originator or individual subject to the New Mexico Mortgage Loan Originator Licensing Act acts or claims to act pursuant to any licensing or registration law of New Mexico or claims to act without such authority;

H. no licensed mortgage loan originator or individual who is the subject of an investigation or examination pursuant to this section shall knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information; and

I. applications for a license or a license renewal, and all papers, documents, reports and other written instruments filed with the director pursuant to the New Mexico Mortgage Loan Originator Licensing Act, are public documents and open to public inspection, except for files of ongoing examinations and

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investigations relating to violations of that act, which investigations do not culminate, or have not yet culminated, in administrative, civil or criminal action.

Section 20. [NEW MATERIAL] MORTGAGE LOAN ORIGINATOR DUTIES.--

A. A mortgage loan originator shall enter into a fiduciary relationship with the borrower. For the purposes of this subsection, "fiduciary relationship" is a relationship in which a mortgage loan originator shall:

- (1) safeguard and account for any money handled for the borrower;
- (2) follow reasonable and lawful instructions from the borrower;
- (3) act with reasonable skill, care and diligence;
- (4) act in good faith and engage in fair dealing in any transaction, practice or course of business regarding mortgage loans;
- (5) direct, recommend and make reasonable efforts to secure a residential mortgage loan that is reasonably advantageous to the borrower, considering all of the circumstances, and has a net tangible benefit to the borrower;
- (6) make a full and fair disclosure of all facts within the knowledge of the mortgage loan originator that are or may be material to the borrower's decision, rights or interests;
- (7) disclose to the borrower the existence of all loans available to the mortgage loan originator, for which the borrower qualifies, that have terms that are as favorable or more favorable than those loans offered to the borrower by the mortgage loan originator;

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(8) not steer the borrower to a loan or loans with terms that are clearly less favorable than those loans offered to the borrower by the mortgage loan originator; and

(9) maintain all information provided by the borrower or obtained regarding the borrower in strict confidence. However, the mortgage loan originator may disclose confidential information if required by law or rule or if the borrower authorizes the disclosure in writing in advance of the disclosure. Any such authorization shall specifically identify the nature of the information to be disclosed.

B. If not provided by the mortgage loan company, a mortgage loan originator shall, in addition to all other disclosures required by statute or common law:

(1) disclose at least two days prior to closing of the loan the total amount of any compensation the mortgage loan company expects to receive specific to the loan being offered, including origination fees, broker fees, yield spread premiums and other fees payable to the mortgage loan company by the lender or other third party at the time the loan is funded to the borrower; and

(2) clearly and conspicuously disclose in writing a mortgage loan summary, as specified by the director by rule.

Section 21. [NEW MATERIAL] PRIVATE RIGHT OF ACTION--DAMAGES--
ENFORCEMENT BY ATTORNEY GENERAL.--

A. Any person who has suffered injury by reason of any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act may sue in district court. Upon a showing that that act is being or has been violated and a showing that the plaintiff has suffered injury, the court may award damages, punitive damages and injunctive relief and shall award the cost of the suit, including reasonable attorney fees.

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B. Whenever the attorney general has reasonable belief that a person is using, has used or is about to use any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act and enforcement proceedings would be in the public interest, the attorney general may bring an action in the name of the state alleging violations of that act. An enforcement action by the attorney general may be brought in the district court of the county in which the person that allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act resides or has its principal place of business, or in the district court in any county in which the person allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act. In any action filed by the attorney general pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution. The attorney general acting on behalf of the state shall not be required to post bond when seeking a temporary or permanent injunction in an action brought pursuant to this section.

C. The relief provided in this section is in addition to remedies otherwise available pursuant to common law or other New Mexico statutes.

Section 22. [NEW MATERIAL] MORTGAGE CALL REPORTS.--A mortgage loan originator shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

Section 23. [NEW MATERIAL] REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.--Subject to state privacy laws, the director shall report regularly violations of the New Mexico Mortgage Loan Originator Licensing Act, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry subject to the provisions set forth in

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Section 18 of the New Mexico Mortgage Loan Originator Licensing Act.

Section 24. [NEW MATERIAL] UNIQUE IDENTIFIER SHOWN.--The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or web sites, and on any other documents as established by rule or order of the director.

Section 25. Section 58-21-1 NMSA 1978 (being Laws 1983, Chapter 86, Section 1, as amended) is amended to read:

"58-21-1. SHORT TITLE.--Chapter 58, Article 21 NMSA 1978 may be cited as the "Mortgage Loan Company [~~and Loan Broker~~] Act"."

Section 26. Section 58-21-2 NMSA 1978 (being Laws 1983, Chapter 86, Section 2, as amended) is amended to read:

"58-21-2. DEFINITIONS.--As used in the Mortgage Loan Company [~~and Loan Broker~~] Act:

A. "affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person;

B. "branch office" means any location, including a divisional office, separate from the principal place of business of the mortgage loan company that is identified by any means to the public or customers as a location at which the licensee holds itself out as a mortgage loan company;

~~[B.]~~ C. "closing agent" means a person, including a title insurance agent or title insurance company, that acts in the normal course of business in a fiduciary capacity as a disinterested third party for the seller and buyer of real property for the purpose of consummating a sale of real property, including the performance of the following functions:

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(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, commissions of real estate licensees, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

[~~G.~~] D. "division" means the financial institutions division of the regulation and licensing department;

[~~D.~~] E. "director" means the director of the financial institutions division of the regulation and licensing department;

[~~E.~~ "~~dwelling~~" means a residential structure, including a home, individual condominium unit, manufactured home or modular home, that contains one to four units and is permanently attached to real property;]

F. "dwelling" means a residential structure that contains one to four units whether or not that structure is attached to real property. "Dwelling" includes an individual condominium unit, an individual cooperative unit, a mobile home and a trailer if used as a residence;

G. "individual" means a natural person;

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~~[F.]~~ H. "lender" means a person or government agency making a mortgage loan;

~~[G. "loan broker"]~~ I. "mortgage loan company" means any person who, ~~[acts as a finder or agent of a lender or borrower of money for the purpose of procuring a mortgage loan, or both]~~ for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

(1) accepts an application for a mortgage loan; negotiates terms for a mortgage loan; or solicits, processes, originates, brokers or makes mortgage loans for others;

(2) offers to:

(a) accept an application for a mortgage loan;

(b) negotiate terms for a mortgage loan; or

(c) solicit, process, originate, broker or make mortgage loans for others; or

(3) closes mortgage loans that may be in the mortgage loan company's own name with funds provided by others and that are assigned to the mortgage lenders providing the funding of such loans;

~~[H.]~~ J. "mortgage loan" means ~~[a loan secured by a dwelling permanently affixed to real property]~~ any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling as so defined;

~~[I. "mortgage loan company" means a person who, directly or indirectly:~~

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~~(1) holds himself out as being able to serve as an agent for any person in an attempt to obtain a mortgage loan;~~

~~(2) holds himself out as being able to serve as an agent for a person who makes mortgage loans; or~~

~~(3) holds himself out as being able to make mortgage loans; and~~

~~J.]~~ K. "net loan funds" means the mortgage loan amounts specified in the note and mortgage less lender-retained fees, as specified in the lender's instruction to the closing agent;

L. "person" means a natural person, corporation, company, limited liability company, partnership or association;

M. "qualified manager" means an individual, designated by a mortgage loan company, responsible for the activities of the licensed mortgage loan company's office, divisional office or branch office in conducting the business of that mortgage loan company's office, divisional office or branch office and who meets requirements as specified by the director; and

N. "servicer" means a person who collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing mortgage loan."

Section 27. Section 58-21-3 NMSA 1978 (being Laws 1983, Chapter 86, Section 3, as amended by Laws 2001, Chapter 251, Section 2 and by Laws 2001, Chapter 264, Section 2) is amended to read:

"58-21-3. [~~REGISTRATION CERTIFICATE~~] LICENSE REQUIRED--

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QUALIFIED MANAGER.--

A. It is unlawful for any person to transact business in the state of New Mexico, either directly or indirectly, as a mortgage loan company [~~or loan broker~~] without first filing an application with the director, meeting requirements established by the director and obtaining a [~~registration certificate~~] license under the Mortgage Loan Company [~~and Loan Broker~~] Act.

B. A mortgage loan company shall designate at least one qualified manager who shall:

(1) obtain and maintain a mortgage loan originator license and unique identifier number pursuant to the New Mexico Mortgage Loan Originator Licensing Act; and

(2) have not less than two years verifiable experience as a principal, partner, officer, director, manager, processor or underwriter of a mortgage loan company or a mortgage loan originator or have equivalent lending experience in a related business during the four years immediately preceding the time of application.

C. A qualified manager shall serve as a qualified manager for only one mortgage loan company."

Section 28. Section 58-21-4 NMSA 1978 (being Laws 1983, Chapter 86, Section 4, as amended by Laws 2001, Chapter 251, Section 3 and by Laws 2001, Chapter 264, Section 3) is amended to read:

"58-21-4. APPLICATION FOR [~~REGISTRATION~~] LICENSE OR RENEWAL.-- Each application for [~~registration~~] a license or license renewal as a mortgage loan company [~~or loan broker~~] shall be filed in writing with the director, shall [~~be verified~~] meet requirements established by the director and shall contain the following:

A. the applicant's name, the name of designated qualified

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managers, the New Mexico mortgage loan originator license number and national mortgage licensing system unique identifier number of each designated qualified manager and the name and location of every mortgage loan company office, divisional office or branch office that will be supervised by that qualified manager;

[A.] B. the name of the applicant and of each of the applicant's affiliates, engaged in the business of [~~a loan broker~~ ~~or~~] a mortgage loan company, and the name under which the applicant will conduct business in New Mexico, together with the articles of incorporation or articles of partnership;

[B.] C. the location of the applicant's principal office and of each branch office doing business in New Mexico;

[C.] D. the name, residence and business address of each person having an interest in the business as principal, partner, officer, trustee, director, [~~or~~] manager or affiliate, specifying the capacity and title of each;

[D.] E. a financial statement of the applicant verified by a principal of the applicant;

[E.] F. the length of time the applicant has been engaged in the mortgage business in New Mexico and other jurisdictions;

[F.] G. disclosure of any action or proceeding, civil or criminal, judicial or administrative, completed or in progress, against the applicant or a principal, partner, director, officer, trustee, manager, employee or affiliate of the applicant;

[G.] H. the [~~registration~~] license fee; and

[H.] I. such other information and documentation as the director may require."

Section 29. Section 58-21-5 NMSA 1978 (being Laws 1983,

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Chapter 86, Section 5, as amended by Laws 2001, Chapter 251, Section 4 and by Laws 2001, Chapter 264, Section 4) is amended to read:

"58-21-5. [~~REGISTRATION~~] LICENSE FEES--DURATION OF
[REGISTRATION] LICENSE.--

~~[A. Applicants shall, at the time of application, pay to the division four hundred dollars (\$400) for initial registration and three hundred dollars (\$300) for each renewal registration. Additionally, the director shall charge and collect from an applicant a fee of ten dollars (\$10.00) per day for late filings of a renewal registration or three hundred dollars (\$300), whichever is less.~~

~~B.] A. A [~~registration~~] license shall [~~continue for a period of twelve months from the date of registration~~] expire on December 31 each year. Each [~~registrant~~] licensee shall submit a renewal application [~~at least thirty days before the expiration of his existing registration~~].~~

~~C. A registrant shall pay a replacement license fee of fifty dollars (\$50.00) on or before November 1 each year.~~

B. The director shall establish by rule fees that shall be sufficient to cover the costs of administering the Mortgage Loan Company Act. These fees may include:

(1) an original and renewal license fee paid by each licensee;

(2) an application fee to cover the costs of processing applications;

(3) an examination and investigation fee for all licensees; and

(4) late fees, license amendment fees, supervisory

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fees, divisional office fees, branch office fees and any other fees associated with the costs of administering the Mortgage Loan Company Act.

C. A mortgage loan company shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of the Mortgage Loan Company Act occurred or when the mortgage loan company provides a remedy satisfactory to the complainant and the director and no order of the director is issued.

D. The following fees shall be deposited into the general fund:

- (1) original license fees;
- (2) license renewal fees;
- (3) examination fees;
- (4) investigation fees;
- (5) late fees; and
- (6) license amendment fees.

E. The following fees shall be deposited into the mortgage regulatory fund:

- (1) application fees;
- (2) divisional office fees;
- (3) branch office fees; and
- (4) supervisory fees."

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Section 30. Section 58-21-6 NMSA 1978 (being Laws 1983, Chapter 86, Section 6, as amended) is amended to read:

"58-21-6. PERSONS EXEMPT FROM ~~[REGISTRATION]~~ LICENSING.--The following persons shall be exempt from all provisions of the Mortgage Loan Company ~~[and Loan Broker]~~ Act:

A. banks, trust companies, savings and loan associations, credit unions, insurance companies or real estate investment trusts as defined in 26 U.S.C.A. 856;

B. an attorney licensed to practice law in New Mexico who is not principally engaged in the business of negotiating loans secured by real or personal property, when ~~[the]~~ that person renders services in the course of ~~[his]~~ the person's practice as an attorney;

C. a New Mexico-licensed real estate broker rendering service in the performance of ~~[his]~~ that person's duties as a real estate broker who obtains financing for a real estate transaction involving an actual bona fide sale of real estate or real estate contract handled by the broker and who receives only the customary real estate broker's commission in connection with the transaction;

D. a person doing an act under order of a court;

E. ~~[a person]~~ an individual making ~~[or acquiring]~~ a single mortgage loan in a calendar year with ~~[his]~~ the individual's own funds for ~~[his]~~ the individual's own investment without the intent to resell the mortgage loan;

F. the United States of America, state of New Mexico or any of their branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions; and

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G. a company licensed as a small business investment company under the federal Small Business Investment Act of 1958."

Section 31. Section 58-21-7 NMSA 1978 (being Laws 1983, Chapter 86, Section 7) is amended to read:

"58-21-7. SURETY BOND.--

A. Each mortgage loan company [~~or loan broker~~] shall post and maintain with the director a corporate surety bond [~~in the amount of twenty-five thousand dollars (\$25,000)~~].

B. The penal sum of the surety bond shall be in an initial amount of fifty thousand dollars (\$50,000). Upon renewal of the license, the penal sum of the surety bond shall be in an amount that reflects the total dollar amount of mortgage loans originated annually in New Mexico by the licensee, as follows:

(1) zero dollars (\$0.00) to three million dollars (\$3,000,000), a surety bond of fifty thousand dollars (\$50,000);

(2) more than three million dollars (\$3,000,000) and less than ten million dollars (\$10,000,000), a surety bond of one hundred thousand dollars (\$100,000); and

(3) ten million dollars (\$10,000,000) or more, a surety bond of one hundred fifty thousand dollars (\$150,000).

C. Every bond shall provide for suit thereon by any person who has a cause of action under the Mortgage Loan Company [~~and Loan Broker~~] Act. In no event shall the total liability of the surety to all persons, cumulative or otherwise, exceed the amount specified in the bond. Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three years after the act upon which it is based.

[~~B.~~] D. The bond shall be in substantially the form as the

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director prescribes.

E. When an action is commenced on a licensee's bond, the director may require the filing of a new bond.

F. Immediately upon recovery upon any action on a bond, the licensee shall file a new bond."

Section 32. Section 58-21-8 NMSA 1978 (being Laws 1983, Chapter 86, Section 8, as amended by Laws 2001, Chapter 251, Section 6 and by Laws 2001, Chapter 264, Section 6) is amended to read:

"58-21-8. [~~DENIAL, SUSPENSION OR REVOCATION OF REGISTRATION~~]
~~VIOLATIONS~~.--The director may deny, suspend or revoke any
[~~registration~~] license or impose other penalties when the applicant
or [~~registrant~~] licensee, or a principal, partner, director,
officer, trustee, manager, employee or affiliate of the applicant or
[~~registrant~~] licensee:

- A. lacks a good business reputation;
- B. has violated a provision of the Mortgage Loan Company
[~~and Loan Broker~~] Act;
- C. charges, collects or receives fees for procuring,
negotiating or securing a loan in excess of the amounts allowed by
the Mortgage Loan Company [~~and Loan Broker~~] Act or by rules
promulgated pursuant to that act;
- D. has committed fraud in connection with a transaction
subject to the Mortgage Loan Company [~~and Loan Broker~~] Act;
- E. has made a misrepresentation or false statement to or
concealed an essential or material fact from a person in the course
of the [~~loan broker or~~] mortgage loan company business;
- F. has knowingly made or caused to be made a false

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representation of material fact or has suppressed or withheld from the director information that the applicant or [~~registrant~~] licensee possesses and [~~which~~] that, if submitted by [~~him~~] that person, would have rendered the applicant or [~~registrant~~] licensee ineligible to be [~~registered under~~] licensed pursuant to the Mortgage Loan Company [~~and Loan Broker~~] Act;

G. has violated any provisions of any New Mexico statute relating to escrow agents or escrow companies;

H. has refused to permit an examination or investigation by the director of [~~his~~] that person's books and records or has refused or failed, within a reasonable time, to furnish information or make a report that may be required by the director under the provisions of the Mortgage Loan Company [~~and Loan Broker~~] Act;

I. has been convicted of a felony or any misdemeanor involving moral turpitude; subject, however, to the provisions of the Criminal Offender Employment Act; [~~or~~]

J. appears to be conducting business in a manner that is injurious to persons;

K. conducts any business covered by the Mortgage Loan Company Act without holding a valid license as required by that act;

L. knowingly assists or aids and abets any person in the conduct of business covered by the Mortgage Loan Company Act without a valid license as required pursuant to that act;

M. hires or engages the services of a mortgage loan originator who is not licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act;

N. makes a mortgage loan without documenting and considering the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be

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demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The provisions of this subsection shall not apply to a mortgage loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a mortgage loan servicer or lender with which the borrower has a current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit; or

O. makes a mortgage loan without determining the borrower's reasonable ability to pay the costs set forth in this subsection. In the case of an adjustable rate mortgage loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the mortgage loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments."

Section 33. Section 58-21-9 NMSA 1978 (being Laws 1983, Chapter 86, Section 9, as amended by Laws 2001, Chapter 251, Section 7 and by Laws 2001, Chapter 264, Section 7) is amended to read:

"58-21-9. POWERS AND DUTIES OF DIRECTOR.--

A. The director shall exercise general supervision and control over mortgage loan companies [~~and loan brokers~~] doing business in New Mexico. In addition to the other duties imposed on [~~him~~] the director by law, the director shall:

(1) make reasonable rules necessary for the implementation of the Mortgage Loan Company [~~and Loan Broker~~] Act;

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provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978;

(2) conduct investigations necessary to determine whether a person has engaged in or is about to engage in an act or practice constituting a violation of a provision of the Mortgage Loan Company [~~and Loan Broker~~] Act; and

(3) conduct examinations, investigations and hearings in addition to those specifically provided for by law necessary and proper to the efficient administration of the Mortgage Loan Company [~~and Loan Broker~~] Act.

B. The director may conduct an investigation upon complaint when it appears that a mortgage loan company [~~or loan broker~~] is conducting business in a manner injurious to persons or when it appears that a person has improperly claimed an exemption pursuant to Section 58-21-6 NMSA 1978."

Section 34. Section 58-21-10 NMSA 1978 (being Laws 1983, Chapter 86, Section 10) is amended to read:

"58-21-10. SUBPOENAS, OATHS AND EXAMINATION OF WITNESSES--
PENALTIES.--

A. In the conduct of any examination, investigation or hearing, the director may:

(1) compel the attendance of any person or obtain any documents by subpoena;

(2) administer oaths; and

(3) examine any person under oath concerning the business of any person subject to the provisions of the Mortgage Loan Company [~~and Loan Broker~~] Act and in connection therewith require the production of any books, records or papers relevant to

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the inquiry.

B. In case of refusal to obey a subpoena issued to any person, the district court of the first judicial district of Santa Fe county, upon application by the director, may issue to the person an order requiring [~~him~~] the person to appear before the director or the staff member designated by the director, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court."

Section 35. Section 58-21-12 NMSA 1978 (being Laws 1983, Chapter 86, Section 12, as amended by Laws 2001, Chapter 251, Section 9 and by Laws 2001, Chapter 264, Section 9) is amended to read:

"58-21-12. EXAMINATION OF RECORDS.--All the records required to be maintained by the Mortgage Loan Company [~~and Loan Broker~~] Act are subject to examinations or investigations by representatives of the director within or without New Mexico as the director deems necessary or appropriate in the public interest or for the protection of investors. [~~The mortgage loan company or loan broker so examined shall pay a fee for each such examination at the rate of three hundred dollars (\$300) per day, or fraction thereof, for each authorized representative engaged in the examination.~~] If the examination or investigation is conducted outside the state, the actual cost of travel for the examiners shall [~~also~~] be reimbursed to the state by the mortgage loan company [~~or loan broker~~] so examined or investigated."

Section 36. Section 58-21-13 NMSA 1978 (being Laws 1983, Chapter 86, Section 13) is amended to read:

"58-21-13. PUBLIC INSPECTION OF APPLICATIONS.--Applications for [~~registration~~] licensing or a license renewal and all papers, documents, reports and other written instruments filed with the

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director under the Mortgage Loan Company [~~and Loan Broker~~] Act are public documents and open to public inspection except for files [~~on~~] of ongoing examinations and investigations relating to violations of that act, which investigations do not culminate, or have not yet culminated, in administrative, civil or criminal action."

Section 37. Section 58-21-14 NMSA 1978 (being Laws 1983, Chapter 86, Section 14) is amended to read:

"58-21-14. NOTICE OF [~~PROPOSED ORDER OF SUSPENSION, REVOCATION OR DENIAL OF REGISTRATION--HEARING~~] CONTEMPLATED ACTION--HEARINGS.--

~~[A. Notice of any proposed order of suspension, revocation or denial of registration of any mortgage loan company or loan broker, together with the grounds therefor, shall be given in writing, served personally or sent by certified mail to the person affected.~~

~~B. The mortgage loan company or loan broker, upon application, is entitled to a hearing; but if no such application is made within ten days after the receipt of or refusal to accept such notice, the director shall enter a final order.]~~

A. When the director contemplates taking any action specified in Section 58-21-8 NMSA 1978 and Paragraphs (1) through (7) of Subsection A of Section 58-21-28 NMSA 1978, the director shall serve upon the licensee a written notice containing a statement:

(1) that the director has sufficient evidence that, if not rebutted or explained, will justify the director in taking the contemplated action;

(2) indicating the general nature of the evidence;
and

(3) that unless the licensee within twenty days after

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service of the notice deposits in the mail a certified return receipt requested letter addressed to the director and containing a request for a hearing, the director will take the contemplated action.

B. If the licensee does not mail a request for a hearing within the time and in the manner required by this section, the director may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

C. If the licensee mails a request for a hearing as required by this section, the director shall, within thirty days of receipt of the request, notify the licensee of the time and place of the hearing, the name of the person who shall conduct the hearing for the director and the statutes and regulations authorizing the director to take the contemplated action."

Section 38. Section 58-21-15 NMSA 1978 (being Laws 1983, Chapter 86, Section 15, as amended by Laws 2001, Chapter 251, Section 10 and by Laws 2001, Chapter 264, Section 10) is amended to read:

"58-21-15. INVESTIGATIONS BY DIRECTOR.--

A. The director may make any public or private investigation, within or outside of this state, as ~~[he]~~ the director finds necessary to determine whether a person has violated or is about to violate the Mortgage Loan Company ~~[and Loan Broker]~~ Act or any rule or order of the director under that act or to aid in enforcement of that act or in the rules under that act.

B. The director may publish information concerning a violation of the Mortgage Loan Company ~~[and Loan Broker]~~ Act or a rule or order of the director under that act or concerning mortgage loan activities of persons that may operate as a fraud or deceit."

Section 39. Section 58-21-17 NMSA 1978 (being Laws 1983,

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Chapter 86, Section 17) is amended to read:

"58-21-17. ESCROW SERVICES.--Any [~~registrant~~] licensee under the Mortgage Loan Company [~~and Loan Broker~~] Act who also performs any acts that are within the scope of activities regulated by any statutes of the state relating to escrow agents shall also comply with all provisions of those statutes, and [~~registration~~] the issuance of a license under the Mortgage Loan Company [~~and Loan Broker~~] Act shall not serve to relieve the [~~registrant~~] licensee from compliance with the provisions of such other statutes."

Section 40. Section 58-21-18 NMSA 1978 (being Laws 1983, Chapter 86, Section 18, as amended by Laws 2001, Chapter 251, Section 11 and by Laws 2001, Chapter 264, Section 11) is amended to read:

"58-21-18. PERMISSIBLE CHARGES.--In connection with any loan originated, brokered, negotiated or made by a [~~registrant~~] licensee pursuant to the Mortgage Loan Company [~~and Loan Broker~~] Act, a [~~broker may~~] mortgage loan company shall not collect, charge or receive broker fees in excess of six percent of the principal amount of the loan. A [~~registrant~~] licensee may charge reasonable settlement, origination, transaction and other fees or charges not otherwise prohibited or limited by applicable state or federal laws."

Section 41. Section 58-21-19 NMSA 1978 (being Laws 1983, Chapter 86, Section 19, as amended) is amended to read:

"58-21-19. COMPLIANCE WITH FEDERAL AND STATE LAW.--In connection with any loan originated, brokered, negotiated or made by a [~~registrant~~] licensee pursuant to the Mortgage Loan Company [~~and Loan Broker~~] Act, [~~registrants~~] a licensee shall comply with:

A. applicable federal [~~consumer lending~~] or state laws;
[and]

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B. the provisions of the Home Loan Protection Act; and

C. the provisions of the New Mexico Mortgage Loan Originator Licensing Act."

Section 42. Section 58-21-20 NMSA 1978 (being Laws 1983, Chapter 86, Section 20) is amended to read:

"58-21-20. FALSE STATEMENT UNLAWFUL.--It is unlawful for any person to make or cause to be made in any document filed with the director in any proceedings under the Mortgage Loan Company [~~and Loan Broker~~] Act any statement [~~which~~] that is at the time and in the light of the circumstances under which it is made false or misleading in any [~~material~~] respect."

Section 43. Section 58-21-21 NMSA 1978 (being Laws 1983, Chapter 86, Section 21) is amended to read:

"58-21-21. FRAUD UNLAWFUL.--It is unlawful for any mortgage loan company [~~or loan broker~~] in connection with the origination, brokering, negotiating or making of any mortgage loan, directly or indirectly, to:

A. employ any device, scheme or artifice to defraud; or

B. engage in any act, practice or course of business [~~which~~] that operates or would operate as a fraud or deceit upon any person."

Section 44. Section 58-21-22 NMSA 1978 (being Laws 1983, Chapter 86, Section 22, as amended by Laws 2001, Chapter 251, Section 13 and Laws 2001, Chapter 264, Section 13) is amended to read:

"58-21-22. PENALTIES.--A person who violates Section [~~58-21-3~~] 58-21-18, 58-21-19, 58-21-20 or 58-21-21 NMSA 1978 [~~or who violates Section 58-21-20 NMSA 1978~~], knowing the statement to be false or

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misleading in any [~~material~~] respect, is guilty of a fourth degree felony and upon conviction shall be sentenced as provided for in Section 31-18-15 NMSA 1978. Civil and criminal penalties are in addition to any remedies available at common law."

Section 45. Section 58-21-23 NMSA 1978 (being Laws 1983, Chapter 86, Section 23, as amended by Laws 2001, Chapter 251, Section 14 and by Laws 2001, Chapter 264, Section 14) is amended to read:

"58-21-23. FILING AND DESTRUCTION OF DOCUMENTS.--A document is filed when it is received by the director. The director may permit the destruction of any document filed under the Mortgage Loan Company [~~and Loan Broker~~] Act with the division or the director after six years from the date of filing documents."

Section 46. Section 58-21-23.2 NMSA 1978 (being Laws 2005, Chapter 191, Section 3, as amended) is amended to read:

"58-21-23.2. FUNDING OF REAL ESTATE TRANSACTIONS--
ENFORCEMENT.--

A. Unless the net loan funds necessary to complete a purchase of real property have been previously delivered to the seller or to the closing agent, a lender shall deliver the required net loan funds within two business days of the time that the lender deems the closing agent has fulfilled the requirements of the closing agent's duties, except for the recordation of documents, and shall:

(1) authorize the closing agent to record with the county clerk all documents necessary to complete the real estate transaction and release the proceeds of the real estate transaction in accordance with agreed upon escrow instructions;

(2) advise the closing agent of any funding conditions, as set forth in the lender's escrow instructions, that

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have not been satisfied and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow; or

(3) advise the closing agent that the documentation for the real estate transaction does not satisfy the lender's escrow instructions, specify the manner in which that documentation does not satisfy those instructions and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow.

B. In the event a lender does not comply with the requirements of Subsection A of this section, unreasonably refuses to approve the documentation necessary to complete a real estate action or unreasonably delays authorization of the recordation of closing documents and release of proceeds of a real estate transaction, the director of the division may, upon receipt of a complaint and in accordance with the procedures set forth in the Mortgage Loan Company [~~and Loan Broker~~] Act, suspend or revoke any state registration or license issued to the lender for a period not to exceed one year."

Section 47. Section 58-21-25 NMSA 1978 (being Laws 1983, Chapter 86, Section 25) is amended to read:

"58-21-25. NO IMPAIRMENT OF OTHER REMEDIES.--The Mortgage Loan Company [~~and Loan Broker~~] Act is not intended to impair any remedies available to injured parties under other statutes or under common law."

Section 48. Section 58-21-26 NMSA 1978 (being Laws 1983, Chapter 86, Section 26) is amended to read:

"58-21-26. EXEMPTION FROM AUTHORITY OF [~~SECRETARY OF COMMERCE AND INDUSTRY~~] SUPERINTENDENT OF REGULATION AND LICENSING.--The responsibilities and authority of the director under the Mortgage Loan Company [~~and Loan Broker~~] Act are explicitly exempted from the authority of the [~~secretary of commerce and industry~~] superintendent

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of regulation and licensing as set forth in Subsection B of Section ~~[9-2-5]~~ 9-16-6 NMSA 1978."

Section 49. Section 58-21-28 NMSA 1978 (being Laws 2001, Chapter 251, Section 15 and Laws 2001, Chapter 264, Section 15) is amended to read:

"58-21-28. ENFORCEMENT.--

~~[A. If the director reasonably believes, whether or not based upon an investigation conducted under Section 58-21-15 NMSA 1978, that a person has engaged, is engaging or is about to engage in an act or practice constituting a violation of any provision of the Mortgage Loan Company and Loan Broker Act or any rule promulgated pursuant to that act, the director may, subject to the right of that person to obtain a subsequent hearing, pursuant to Subsection B of Section 58-21-14 NMSA 1978, issue a cease and desist order without a prior hearing against the person engaged in the prohibited activities directing him to desist and refrain from further illegal activity.~~

~~B. When it appears to the director, whether or not based upon an investigation conducted under Section 58-21-15 NMSA 1978, that a person has violated the Mortgage Loan Company and Loan Broker Act or a rule or order of the director under that act, the director, in addition to any specific power granted under that act, may, after notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by the person against whom the sanction is imposed:~~

~~(1) issue a cease and desist order against the person;~~

~~(2) censure the person if that person is a registered mortgage loan company or loan broker;~~

~~(3) bar or suspend that person from registration in~~

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~~this state as a mortgage loan company or loan broker;~~

~~(4) issue an order against an applicant, registered person or other person who violates that act, imposing a civil penalty up to a maximum of five thousand dollars (\$5,000) for each violation; or~~

~~(5) initiate one or more of the actions specified in Section 58-21-29 NMSA 1978, as applicable.]~~

A. In order to ensure the effective supervision and enforcement of the Mortgage Loan Company Act, the director may:

(1) deny, suspend, revoke or decline to renew a license for a violation of that act, rules issued pursuant to that act or order or directive entered pursuant to that act;

(2) deny, suspend, revoke or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of licensing pursuant to that act or rules issued pursuant to that act;

(3) order restitution against persons subject to that act for violations of that act;

(4) impose fines on persons subject to that act pursuant to Subsections B through D of this section;

(5) order or direct such other affirmative action as the director deems necessary;

(6) deny the person's license application or suspend or revoke the person's license in New Mexico as a mortgage loan company;

(7) award damages to the injured party in double the amount of fees charged by the mortgage loan company for originating,

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brokering, negotiating or making a loan within the jurisdiction of that act;

(8) issue orders or directives pursuant to that act as follows:

(a) order or direct persons subject to that act to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(b) order or direct persons subject to that act to cease and desist any harmful activities or violations of that act, including immediate temporary orders to cease and desist; and

(c) enter immediate temporary orders to cease business under a license issued pursuant to the authority granted pursuant to that act if the director determines that such license was erroneously granted or the licensee is currently in violation of that act; and

(9) initiate one or more of the actions specified in Section 58-21-29 NMSA 1978, as applicable.

B. The director may impose a civil penalty on a mortgage loan company or person subject to the Mortgage Loan Company Act if the director finds, on the record after notice and opportunity for hearing, that the mortgage loan company or person subject to that act has violated or failed to comply with any requirement of that act or any rule adopted by the director pursuant to that act or order issued pursuant to that act.

C. The maximum amount of penalty for each act or omission described in Section 58-21-8 NMSA 1978 shall be twenty-five thousand dollars (\$25,000).

D. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or

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failure."

Section 50. Section 58-21-29 NMSA 1978 (being Laws 2001, Chapter 251, Section 16 and Laws 2001, Chapter 264, Section 16) is amended to read:

"58-21-29. POWER OF COURT TO GRANT RELIEF.--

A. Upon a showing by the director that a person has or is about to violate the Mortgage Loan Company [~~and Loan Broker~~] Act or any rule or order of the director under that act, the district court of the first judicial district for Santa Fe county or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) a civil penalty up to a maximum of [~~five thousand dollars (\$5,000)~~] twenty-five thousand dollars (\$25,000) for each violation;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

(6) the appointment of a receiver or conservator for the defendant or the defendant's assets;

(7) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action under that act; or

(8) other relief as the court deems just.

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B. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director under Section 58-21-28 NMSA 1978 in connection with the transactions constituting violations of the Mortgage Loan Company [~~and Loan Broker~~] Act.

C. The court shall not require the director to post bond in an action under this section."

Section 51. A new section of the Mortgage Loan Company Act is enacted to read:

"[NEW MATERIAL] UNLICENSED ACTIVITY.--

A. A person that violates Subsection A of Section 58-21-3 NMSA 1978 for the first offense is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. In the case of a first conviction pursuant to Subsection A of this section, the court may impose a deferred sentence pursuant to the provisions of Section 31-20-6 NMSA 1978.

C. A person that violates Subsection A of Section 58-21-3 NMSA 1978 for a second or subsequent offense is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Section 52. A new section of the Mortgage Loan Company Act is enacted to read:

"[NEW MATERIAL] LICENSEE REQUIRED DISCLOSURES.--A mortgage loan company shall, in addition to other disclosures required pursuant to other statutes or common law:

A. make all disclosures required by applicable federal and state laws;

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B. provide a revised "good faith estimate" and a copy of the borrower's lock-in agreement to the borrower within three days of locking in the loan rate, pricing and terms;

C. make a full and fair disclosure of all facts within the knowledge of the mortgage loan company that are or may be material to the borrower's decision, rights or interests;

D. disclose at least two days prior to closing of the loan, in a manner that can be understood by a reasonable borrower, the total amount of any compensation the mortgage loan company expects to receive specific to the loan being offered, including origination fees, broker fees, yield spread premiums and other fees payable to the mortgage loan company by the lender or other third party at the time the loan is funded to the borrower;

E. clearly and conspicuously disclose in writing a mortgage loan summary, as specified by the director by rule; and

F. enter into a signed contract with the borrower, as specified by the director by rule, that provides for mortgage loan rate float or rate lock-in. The borrower may choose to:

(1) rate float, which means that a loan rate has not been locked in and the borrower is responsible for instructing the mortgage loan company when to lock in the loan rate; or

(2) lock in a rate, which means the mortgage loan originator shall lock in a loan rate. The rate lock-in shall include the loan interest rate, pricing, terms, lock-in period and any fees required for an extension of the lock-in period."

Section 53. A new section of the Mortgage Loan Company Act is enacted to read:

"[NEW MATERIAL] MORTGAGE CALL REPORTS.--Each licensee shall

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submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require."".

3. Renumber the succeeding sections accordingly.

4. On page 6, line 16, after "funding", insert "fee".

5. On page 6, line 17, after "guarantee", insert "fee".

6. On page 8, between lines 8 and 9, insert a new subsection as follows:

"0. "servicer" means a person who collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a home loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing home loan;".

7. Reletter the succeeding subsections accordingly.

8. On page 24, strike lines 21 and 22 in their entirety and insert the following new sections:

"Section 59. [NEW MATERIAL] MORTGAGE REGULATORY FUND--
CREATED--PURPOSE--APPROPRIATION.--

A. The "mortgage regulatory fund" is created as a nonreverting fund in the state treasury and shall be administered by the financial institutions division of the regulation and licensing department. The fund shall consist of application, licensing, renewal, examination, investigation and any other fees received that are associated with the costs of administering the New Mexico

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Mortgage Loan Originator Licensing Act, fees specified in Subsection E of Section 58-21-5 NMSA 1978 and any money that is appropriated or donated or that otherwise accrues to the fund. Money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund.

B. Money in the mortgage regulatory fund is appropriated to the financial institutions division of the regulation and licensing department to carry out the provisions of the New Mexico Mortgage Loan Originator Licensing Act and the Mortgage Loan Company Act.

C. Money shall be disbursed from the mortgage regulatory fund only on warrant of the secretary of finance and administration upon vouchers signed by the director of the financial institutions division or the director's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Section 60. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 61. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 4 and 16 of this act is July 31, 2010.

B. The effective date of the provisions of Sections 1 through 3, 5 through 15 and 17 through 60 of this act is July 31, 2009.".,

and thence referred to the **JUDICIARY COMMITTEE.**

**FORTY-NINTH LEGISLATURE
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Respectfully submitted,

Phil Griego, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Duran, Lovejoy, Munoz

Absent: None

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